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NSA Spying

The Most Secret Agents

We now know that agencies presumed to be protecting the United States from foreign threats have in fact used some of their resources to violate Americans' constitutional rights. The army conducted an extensive surveillance of individuals opposed to the Vietnam war. The CIA, in operation CHAOS and other programs, spied on "dissident" groups. Domestic organizations such as the IRS and the FBI have also strayed from their responsibility to enforce the law, violating constitutional rights by snooping and, in the COINTELPRO activities of the FBI, by seeking to manipulate the actions of groups. We have discovered all of this because of leaks from officials, investigative reporting, lawsuits filed under the Freedom of Information Act, and congressional investigations.

There is, however, one organization whose intrusions into the private activities and communications of American citizens we are only beginning to glimpse. The National Security Agency (NSA), buried deep in the Defense Department, remains behind the curtain of official protection that in the past covered all intelligence organizations. Consider its position:

- Although it employs more people than the CIA does, its charter remains totally secret, as does its budget.
- NSA is completely exempt from the provisions of the Freedom of Information Act, which has been used to pry documents from the FBI and the CIA.
- Disclosure of the secrets of NSA is a criminal offense with no requirement that the government prove intent to injure the national defense as it must do for airing secrets of the CIA and Defense Department.

All of this seemed reasonable if the agency had limited itself to its primary function: the making and breaking of codes. Of all the institutions gaining respectability during World War II, the code breakers stand close to the top. It's well known that Japanese codes were cracked with a great impact on the battles of the Pacific. Only recently have we learned that the most secret codes of the Nazi high command were read throughout the war. No enemy has been shown to have broken any important American code.

This was an impressive record and Congress responded by tightening the laws making the release of codes or cryptographic information a crime. In the early 1950s, NSA was created in great secrecy by a still-classified presidential directive. Until recently the government would say nothing about what NSA does except for one enigmatic statement in the official government manual. Indeed it has been reported that one of the main government objections to the release of the Pentagon Papers, pressed in in-camera proceedings in the attempt to get an injunction against publication, was that it revealed the simple fact that the United

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The first tantalizing clue, virtually ignored at the time, came with the release of the so-called Huston Plan documents, relating to the White House proposal to step up surveillance of domestic "dissidents." Copies of these memoranda, taken by John Dean as part of his effort not to be a fall guy, revealed Nixon approval of a widespread program of illegal activities. Public attention focused on whether the plan actually went into effect not on the description of the current and past activities of the intelligence agencies. It was not known at the time that the memoranda were inaccurate, disguising existing violations of the law, a matter to which I return below.

Although the memorandum written by the interagency committee shows NSA to be an active participant in the discussions and its director, Vice Admiral Noel Gayler, as a signer of the report, we do not know what the report says about NSA activities since the entire discussion of its activities is deleted even from the most complete text available, that published by the House Judiciary Committee in its remarkable Statement of Information regarding White House Surveillance Activities (Book VII). However the discussion of this subject in White House aide Tom Huston's memo to President Nixon, printed in the same volume, provides the first official clues to NSA activities. Here is what Huston wrote to the President regarding NSA:

Recommendation: Present interpretation should be broadened to permit and program for coverage by NSA of the communications of US citizens using international facilities.

Rationale: The FBI does not have the capacity to monitor international communications. NSA is currently doing so on a restricted basis, and the information it has provided has been most helpful. Much of this information is particularly useful to the White House and it would be to our disadvantage to allow the FBI to determine what NSA should do in this area without regard to our own requirements. No appreciable risk is involved in this course of action.

On July 23, 1970 Huston sent a memorandum to the heads of all intelligence agencies, including NSA, reporting the results of their exercise. The memorandum, whose subject was given as "Domestic Intelligence," listed a number of changes in procedures that the President had approved. The first item read as follows:

- 1) Interpretive Restraint on Communications Intelligence. National Security Council Intelligence

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